MONTANA LEGISLATIVE HISTORY

Chapter 564 1999

Bill H 310 S _____ Original bill & history ✓ C

H. Committee on Education			S. Committee on Judiciary		
Hearing Date(s)	_____	C	Hearing Date(s)	_____	C
	1/27	C		3/4	C
	_____	C		_____	C
	2/3	C		3/16	C
Date Out	_____	C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

	Transmitted to Senate		
2/02	Referred to Judiciary		
3/22	Hearing		
3/24	Committee Executive Action--Bill Concurred	8	0
3/24	Committee Report--Bill Concurred		
3/26	2nd Reading Concurred	48	0
3/27	3rd Reading Concurred	49	0
	Returned to House		
3/27	Sent to Enrolling		
3/29	Returned from Enrolling		
3/30	Signed by Speaker		
3/30	Signed by President		
3/31	Transmitted to Governor		
4/05	Signed by Governor		
4/06	Chapter Number Assigned		
	Chapter Number 237		
	Effective Date: 10/01/1999 - All Sections		

HB 309 Introduced by Molnar, et al. *LC1283 Drafter: MacMaster*

Provide Additional Duties for the Attorney General in Relation to Law Suits, Attorney General's Opinions, and Ballot Issues;...

12/16	Fiscal Note Needed
1/15	Fiscal Note Requested
1/16	Introduced and 1st Reading
1/16	Referred to Judiciary
1/20	Fiscal Note Received
1/21	Fiscal Note Signed
1/21	Fiscal Note Printed
1/21	Hearing
1/28	Tabled in Committee
3/01	Missed Deadline for General Bill Transmittal

HB 310 Introduced by Molnar, et al. *LC1056 Drafter: Lane*

Establish Drug-free and Crime-free Schools;...

1/16	Introduced and 1st Reading		
1/16	Referred to Education		
1/27	Hearing		
2/04	Committee Executive Action--Bill Passed as Amended	12	6
2/04	Committee Report--Bill Passed as Amended		
2/06	2nd Reading Passed as Amended	57	38
2/09	3rd Reading Passed	55	44
	Transmitted to Senate		
2/10	Referred to Education and Cultural Resources		
2/16	Rereferred to Judiciary		
3/04	Hearing		
3/17	Committee Executive Action--Bill Concurred as Amended	5	3
3/17	Committee Report--Bill Concurred as Amended		
3/19	2nd Reading Concurred as Amended	44	0
3/20	3rd Reading Concurred	40	2
	Returned to House with Amendments		
4/09	2nd Reading Senate Amendments Not Concur Motion Failed	49	49

4/10	2nd Reading Senate Amendments Not Concur Motion Failed	48	51
4/12	3rd Reading Passed as Amended by Senate	53	44
4/12	Sent to Enrolling		
4/14	Returned from Enrolling		
4/14	Signed by Speaker		
4/14	Signed by President		
4/15	Transmitted to Governor		
4/16	Returned to House with Governor's Proposed Amendments		
4/20	2nd Reading Governor's Proposed Amendments Concurred	97	1
4/21	3rd Reading Governor's Proposed Amendments Concurred	81	18
4/21	Transmitted to Senate for Consideration of Governor's Proposed Amendments		
4/21	2nd Reading Governor's Proposed Amendments Concurred	50	0
4/21	3rd Reading Governor's Proposed Amendments Concurred	47	2
4/21	Returned to House Concurred in Governor's Proposed Amendments		
4/21	Sent to Enrolling		
4/23	Returned from Enrolling		
4/28	Signed by President		
4/29	Signed by Speaker		
4/30	Transmitted to Governor		
5/05	Signed by Governor		
5/07	Chapter Number Assigned Chapter Number 564 Effective Date: 10/01/1999 - All Sections		

HB 311 Introduced by Molnar, et al. *LC1055 Drafter: MacMaster*

Provide an Administrative or Court Proceeding upon an Allegation That a Person Made a False Statement about a Ballot Issue;...

1/15	Fiscal Note Requested
1/16	Introduced and 1st Reading
1/16	Referred to State Administration
1/21	Fiscal Note Received
1/21	Fiscal Note Signed
1/22	Fiscal Note Printed
2/02	Hearing
2/05	Tabled in Committee
3/01	Missed Deadline for General Bill Transmittal

HB 312 Introduced by Galvin-Halcro, et al. *LC0882 Drafter: McClure*

Require Binding Arbitration for All Public Employers;...

12/03	Fiscal Note Needed
1/15	Fiscal Note Requested
1/16	Introduced and 1st Reading
1/16	Referred to Business and Labor
1/21	Fiscal Note Received
1/21	Fiscal Note Signed
1/21	Fiscal Note Printed
1/26	Hearing
1/28	Tabled in Committee
3/01	Missed Deadline for General Bill Transmittal

H BILL NO. 310

INTRODUCED BY Bud Malmen
(Primary Sponsor)

Rehberg Cross

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING DRUG-FREE AND CRIME-FREE SCHOOLS; REQUIRING THE YOUTH COURT TO NOTIFY A SCHOOL WHEN A YOUTH HAS BEEN FOUND BY A JUVENILE PROBATION OFFICER OR THE YOUTH COURT TO BE CURRENTLY INVOLVED IN DRUG USE OR OTHER CRIMINAL ACTIVITY; AUTHORIZING A SCHOOL TO EXPEL OR TO REFUSE TO ACCEPT THE YOUTH IF REFUSAL DOES NOT VIOLATE FEDERAL LAW; AND AMENDING SECTIONS 41-5-215 AND 52-2-211, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-5-215, MCA, is amended to read:

"**41-5-215. Youth court and department records -- notification of school.** (1) Except as provided in ~~subsection (2)~~ subsections (2) and (3), all youth court records on file with the clerk of court, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county interdisciplinary child information team formed under 52-2-211 who

is not listed in this subsection (2);

(h) members of a local interagency staffing group provided for in 52-2-203;

(i) persons allowed access to the records referred to under 45-5-624(7); and

(j) persons allowed access under 42-3-203.

(3) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e), if a petition has not been filed and the juvenile probation officer, youth court, or agency, as defined in 41-5-103, has reasonable cause to believe that a youth is currently involved with drug use or criminal activity or if a petition has been filed and the juvenile probation officer or youth court finds that a youth is currently involved in drug use or other criminal activity, the youth court shall notify the school that the youth will attend of the drug use or criminal activity issues. Upon notification, the school may expel or refuse to accept the youth as a student but may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

~~(3)~~(4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

~~(4)~~(5) The identity of a youth who for the second or subsequent time admits violating or is adjudicated as having violated a statute must be disclosed by youth court officials to the administrative officials of the school in which the youth is a student. ~~The administrative officials may enforce any~~ for purposes of referral for enrollment in a substance abuse program or enforcement of school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

~~(5)~~(6) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings.

~~(6)~~(7) After youth court and department records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in ~~subsection (2)~~ subsections (2) and (3); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority."

Section 2. Section 52-2-211, MCA, is amended to read:

"**52-2-211. County interdisciplinary child information team.** (1) The following persons and agencies operating within a county may by written agreement form a county interdisciplinary child information team:

(a) the youth court;

(b) the county attorney;

(c) the department of public health and human services;

(d) the county superintendent of schools;

(e) the sheriff;

(f) the chief of any police force;

(g) the superintendents of public school districts; and

(h) the department of corrections.

(2) The persons and agencies signing a written agreement under subsection (1) may by majority vote allow the following persons to sign the written agreement and join the team:

(a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;

(b) entities operating private elementary and secondary schools;

(c) attorneys; and

(d) a person or entity that has or may have a legitimate interest in one or more children that the team will serve.

(3) (a) The members of the team or their designees may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or children with a particular type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

(b) A member of an auxiliary team must be a person who has personal knowledge of or experience with the child or children in the member's respective field.

(4) The purpose of the team and written agreement is to facilitate the exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions and occupations, including but not limited to abused or neglected children, delinquent youth, and youth in need of intervention. Information regarding a child that a team member supplies to other team members or that is disseminated to a team member under 41-3-205 or 41-5-215(2) and (3) may not

be disseminated beyond the team.

(5) The terms of the written agreement must provide for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, and any other matters necessary to the purpose and functions of the team.

(6) The terms of the written agreement must state how the team will coordinate its efforts with interdisciplinary child protective teams as provided in 41-3-108 and youth placement committees as provided for in 41-5-121.

(7) To the extent that the county interdisciplinary child information team is involved in a proceeding that is held prior to adjudication of a youth in youth court, the team satisfies the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to the team. The terms of the written agreement described in subsection (5) must include a requirement that the officials and authorities to whom the information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent or guardian of the student."

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By CHAIRMAN GAY ANN MASOLO, on January 27, 1999 at 3:00 P.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Gay Ann Masolo, Chairman (R)
Rep. Bob Lawson, Vice Chairman (R)
Rep. Linda McCulloch, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Tom Facey (D)
Rep. Daniel Fuchs (R)
Rep. Kathleen Galvin-Halcro (D)
Rep. Kim Gillan (D)
Rep. John L. Holden (R)
Rep. Sam Kitzenberg (R)
Rep. Monica Lindeen (D)
Rep. Jeff Mangan (D)
Rep. Joe McKenney (R)
Rep. Mark Noennig (R)
Rep. Bill Rehbein (R)
Rep. Sam Rose (R)
Rep. Allan Walters (R)
Rep. Diana Wyatt (D)

Members Excused: None.

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Linda Scott, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing Dated: HB 310, 1/27/1999
Executive Action: HB 301

HEARING ON HB 310

Opening Statement by Sponsor: Rep. Brad Molnar
{Tape : 1; Side : A; Approx. Tape Counter : 2 - 85}

Proponents' Testimony:

Al McMilin, Superintendent, Laurel, Mt.
{Tape : 1; Side : A; Approx. Tape Counter : 89 - 169}

Ed Sansom, Superintendent, St. Regis, Mt.
{Tape : 1; Side : A; Approx. Tape Counter : 172 - 255}

Opponents' Testimony:

Bill Cooper, Deputy Director, O.P.I.
{Tape : 1; Side : A; Approx. Tape Counter : 262 - 304}

Eric Feaver, M.E.A./M.F.T.
{Tape : 1; Side : A; Approx. Tape Counter : 306 - 368}

Informational Testimony:

G. Joe Connell, Chief, M.J.P.O.A.
{Tape : 1; Side : A; Approx. Tape Counter : 373 - 501}

Loran Frazier, S.A.M. EXHIBIT(1)
{Tape : 1; Side : B; Approx. Tape Counter : 502 - 530}

Mary Pippin
{Tape : 1; Side : B; Approx. Tape Counter : 532 - 565}

Lance Melton, M.S.B.A.
{Tape : 1; Side : B; Approx. Tape Counter : 567 - 592}

Questions from Committee Members and Responses:
{Tape : 1; Side : B; Approx. Tape Counter : 594 - 999}
{Tape : 2; Side : A; Approx. Tape Counter : 1 - 25}

Closing by Sponsor:
{Tape : 2; Side : A; Approx. Tape Counter : 29 - 133}

MONTANA EDUCATION LABOR MANAGEMENT COMMITTEE PRESENTATION
{Tape : 2; Side : A; Approx. Tape Counter : 142 - 382} EXHIBIT(1)

EXECUTIVE ACTION ON HB 301

Motion: REP. FUCHS moved that HB 301 DO PASS.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By **CHAIRMAN GAY ANN MASOLO**, on February 3, 1999 at 3:00 P.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Gay Ann Masolo, Chairman (R)
Rep. Bob Lawson, Vice Chairman (R)
Rep. Linda McCulloch, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Tom Facey (D)
Rep. Daniel Fuchs (R)
Rep. Kathleen Galvin-Halcro (D)
Rep. Kim Gillan (D)
Rep. John L. Holden (R)
Rep. Sam Kitzenberg (R)
Rep. Jeff Mangan (D)
Rep. Joe McKenney (R)
Rep. Mark Noennig (R)
Rep. Bill Rehbein (R)
Rep. Sam Rose (R)
Rep. Allan Walters (R)
Rep. Diana Wyatt (D)

Members Excused: Rep. Monica Lindeen (D)

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Linda Scott, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing Dated: HB 419, 2/3/1999
Executive Action: HB 236; HB 310

Clarification of Amendments by Connie Erickson:
{Tape : 1; Side : A; Approx. Tape Counter : 303 - 374}

Discussion:
{Tape : 1; Side : A; Approx. Tape Counter : 375 - 451}

Motion/Vote: REP. FUCHS moved that HB 236 DO PASS. Motion carried 10-8, with Reps. Andersen, Facey, Galvin-Halcro, Holden, Mangan, Rehbein, Walters and Wyatt voting no.
{Tape : 1; Side : B; Approx. Tape Counter : 452 - 490}

EXECUTIVE ACTION ON HB 310

Motion: REP. ANDERSEN moved that HB 310 DO PASS.
Motion: REP. ANDERSEN moved that HB 310 DO PASS AS AMENDED.
{Tape : 1; Side : B; Approx. Tape Counter : 491 - 493}

Discussion:
{Tape : 1; Side : B; Approx. Tape Counter : 494 - 699}

Motion/Vote: REP. MANGAN moved that HB 310 BE AMENDED. Motion carried 13-5 with Reps. McCulloch, Facey, Galvin-Halcro,Lindeen and Mangan voting no.
{Tape : 1; Side : B; Approx. Tape Counter : 700 - 730}

Motion: REP. LAWSON moved that HB 310 DO PASS AS AMENDED.
{Tape : 1; Side : B; Approx. Tape Counter : 731 - 732}

Discussion:
{Tape : 1; Side : B; Approx. Tape Counter : 733 - 884}
{Tape : 2; Side : A; Approx. Tape Counter : 1 - 14}

Motion/Vote: REP. LAWSON moved that HB 310 DO PASS AS AMENDED. Motion carried 12-6 with Reps. McCulloch, Facey, Galvin-Halcro, Lindeen, Mangan, and Wyatt voting no.
{Tape : 2; Side : A; Approx. Tape Counter : 14 - 31}

EXECUTIVE ACTION ON HB 401

Motion: REP. LAWSON moved TO BRING HB 401 OFF THE TABLE.
{Tape : 2; Side : A; Approx. Tape Counter : 32 - 34}

Motion/Vote: REP. MANGAN moved TO CHANGE HB 401 TO RESOLUTION. Motion carried 17-1, with Rep. Rehbein voting no.
{Tape : 2; Side : A; Approx. Tape Counter : 35 - 67}

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 4, 1999 at 9:05 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 24, HB 176, HB 310, 3/1/1999
Executive Action: HB 116, HB 176

HEARING ON HB 24

Sponsor: **REP. LOREN SOFT, HD 12, Billings**

Proponents: **Joe Mazurek, National Conference of Commissioners on Uniform State Laws**
Justice James C. Nelson, National Conference of Commissioners on Uniform State Laws

interested in retaining statistical information. The purpose is for information regarding what drives our youth into the juvenile system. He has been told that if children are taken out of foster care within 18 months, they will not end up in the juvenile system. He believes that this statistical information will help future legislators make policy decisions relating to the juvenile justice system.

Closing by Sponsor:

REP. BERGSAGEL closed on HB 176.

{Tape : 1; Side : B; Approx. Time Counter : 9.50}

HEARING ON HB 310

Sponsor: REP. BRAD MOLNAR, HD 22, Laurel

Proponents:
Lance Melton, General Counsel, Montana School Boards Association
Al McMillan, Superintendent of Schools, Laurel
Rich Shaffer, Superintendent of Schools in Shields Valley
Warren Frazier, School Administrators Association

Opponents:
Catherine Love, Office of Public Instruction
Mike McGrath, Lewis and Clark County Attorney
Phil Campbell, Montana Education Association and the Montana Federation of Teachers
Joe Connell, Chief Probation Officer, Fifth Judicial District
David Gates, Juvenile Probation Officer, Gallatin County
Joy Mariska, Director of Court Services - Yellowstone, Carbon, Bighorn, and Stillwater Counties
Allen Horsfall, Juvenile Justice Program Specialist for the Board of Crime Control
Sandy Oitzinger, Montana Juvenile Probation Officers Association

Opening Statement by Sponsor:

REP. BRAD MOLNAR, HD 22, Laurel, introduced HB 310. He explained that currently if a juvenile is in trouble with the law in one school district, he may be transferred to another school district for treatment, foster care, or to a group home, etc. The school district is not informed about the reason. This bill states that

if the child is in the custody or has been brought to the knowledge of a juvenile probation officer, that information will be given to the school. Currently this is done on a violation of a statute on a second offense. This allows the school to be informed if the child is a drug dealer or has terrible problems with anger. Under current policies, the school has the right to accept or reject that student up to and including the Americans with Disabilities Act or the Americans Educational Disabilities Act. Currently the only way to expel a child from school is if that child is carrying a gun.

This bill is about sharing information between the juvenile probation officer and the school. This information flows both ways.

Proponents' Testimony:

Lance Melton, General Counsel, Montana School Boards Association, presented his written testimony, **EXHIBIT(3).** Under the current law, school districts operate in somewhat of a parallel fashion with the Youth Court. This bill ensures that the Youth Court will provide information to the school district that will allow them to provide a safer learning environment for all the children.

He referred to the amendments, Section 1 (3). This states that the school district may apply its policies to information which it receives. The school district has independent statutory authority to adopt policies providing for suspension, expulsion, admission, and denial of admission to students in the state. These policies have been subjected to repeated court interpretations over the years in virtually every state in the nation. Those court cases maintain that a school district may take action when it constitutes something serious that has the potential to disrupt the educational environment. This bill is not seeking to expand the school district's role to take action.

He further remarked that opponents may hold that this creates liability for the juvenile probation officers who would be required to report. He urged the Committee to consider this carefully. If a school district does something inappropriate with the information received, the school district will be liable.

{Tape : 1; Side : B; Approx. Time Counter : 10:00}

Al McMillan, Superintendent of Schools, Laurel, remarked that the key element for schools is information if they are to serve the student. The need the information to prepare the system, accept the student and to provide the kind of instruction and

supervision that will allow that student to succeed. Schools handle confidential information all the time. Their staffs are trained in this matter. They need to know the problems which the students might be bringing so that they can be alert and move quickly before a problem becomes a tragedy. In Laurel, the school district has a joint task force with the city council. They meet on a regular basis to work together in helping students. At a meeting regarding expansion of their search dog policy to include cars in the high school parking lot, a middle school student council member stated that this is something they expected from the school district. They expect to be protected and have faith that this would be handled correctly.

He provided written testimony from **Ed Sansom, Superintendent of St. Regis School District #1, EXHIBIT(4).**

Rich Shaffer, Superintendent of Schools in Shields Valley, rose in support of HB 310. When he first began working in the school system, the major concerns were chewing gum on the bottom of seats and the occasional tardy student. Today the concerns include guns, drugs, gangs, assaults, etc. Students come from all parts of the state and country. The schools know very little about the students. A safe learning environment is the single most important item in providing a school where children are able to learn.

Warren Frazier, School Administrators Association, contended that the purpose of this bill is to help the youth who are at risk. It is essential to share information on how to best help the student. A trust level needs to be developed. It takes a lot of time to make things better for these students. Sharing information should decrease liability as well as provide a deterrent. Schools are guided by federal law in regard to confidentiality.

Opponents' Testimony:

Catherine Love, Office of Public Instruction, claimed that they currently work with the Juvenile Probation Association to promote sharing of information between school districts and the Youth Court. They believe that this bill goes beyond sharing information and violates a student's right to due process. Without a finding by the Youth Court, a student may be expelled, suspended, or refused enrollment from the school for an action which they are suspected of committing. While the words "off school grounds" do not appear in this bill, HB 310 allows schools to punish students for actions that were taken off school grounds. This is typically a right of parents and, in more serious situations, it is a duty of the Youth Court. They are concerned about where the expelled youth would go for an

education, other than the streets. This bill allows a new district to refuse to enroll a student on the same grounds for which they were expelled from the previous school.

{Tape : 1; Side : B; Approx. Time Counter : 10.10}

Mike McGrath, Lewis and Clark County Attorney, remarked that the bill addresses a problem that does not exist. Section 2 of the bill shows that there already is a mechanism that allows for sharing of information which is done on a regular basis. County interdisciplinary child information teams are formed between the juvenile probation officer, the law enforcement community, and members of the school district.

Section 1(3) of the bill would require a juvenile probation officer who has reasonable cause to believe that a youth is currently involved with drugs or criminal activity to make a report to the school district. This does not require reporting on youths who have been adjudicated but on youths who have been rumored. There are serious due process flaws in this bill. If this bill is adopted, this section should be amended to limit it to situations involving youths who have been adjudicated and have been found to have committed a crime either through a consent decree or a trial.

Phil Campbell, Montana Education Association and the Montana Federation of Teachers, remarked that their concerns with this bill is that it involves sharing of information from the probation officers on situations where there has been no adjudication. If there is reasonable cause that they are involved in illegal activity, they should be arrested.

Joe Connell, Chief Probation Officer, Fifth Judicial District, opposed the bill on behalf of the juvenile probation officers in this state. The main concern is the inability of probation officers to effectively share information that may be suspicion.

David Gates, Juvenile Probation Officer, Gallatin County, explained that their interdisciplinary team in Gallatin County consists of persons from the school district, county attorney's office, youth probation, Department of Family Services, law enforcement agencies, shelter care, private therapist, placement programs, counseling, Department of Corrections, etc. The committee consists of 82 members, with half of the membership from the public school system. Everyone on the team agrees that information can be shared. This is done through the team. The large group meets every two months and the smaller teams meet on a weekly basis. The parents and the child are welcome to their meetings. In one week, his office had two sex offenders come back to Gallatin County. One was from placement and another

moved back from another state. They had both been to treatment and found guilty of sex offenses. There is still some risk with these students.

He further remarked that he had received a phone call from another state where a youth was coming to the community. This call came from the school. He was told that the youth had burned down his family home. He had never been charged with the offense. He was young and had gone through the mental health program. He recommended a mandatory requirement for every county to have an interdisciplinary team. He provided a copy of their confidentiality statement, **EXHIBIT(5)**.

{Tape : 2; Side : A; Approx. Time Counter : 10.20}

Joy Mariska, Director of Court Services - Yellowstone, Carbon, Bighorn, and Stillwater Counties, remarked that they have probation officers who are assigned to the high schools and middle schools. They work directly with the deans and principals in those schools, specifically sharing information. This bill mandates a notification to schools based on suspicion. Having worked in law enforcement, she understands what it takes to put a case together. Many times what appears to be true is not the case until all the facts are out. If the information does not rise above the level of reasonable cause, it should not go any further. If a student is found with something in September, they are out of school until the next fall. This happens on a regular basis.

There were approximately 1900 referrals to their office in Billings last year. She could not imagine what the school districts would do with all of the reports if they were sent to the school district. If the schools are given the information and do not act on it, they are taking on additional liability.

Allen Horsfall, Juvenile Justice Program Specialist for the Board of Crime Control, presented his written testimony, **EXHIBIT(6)**.

Sandy Oitzinger, Montana Juvenile Probation Officers Association, stated that in Section 1(3), the reasonable cause requirements apply to agencies as well as the Youth Court and juvenile probation officers. She presented her written testimony, **EXHIBIT(7)**. She also provided written testimony from Marie Studebaker, Juvenile Probation Officer from Libby, MT, **EXHIBIT(8)** and Gary J. Loshesky, CPO from Anaconda, MT, **EXHIBIT(9)**.

{Tape : 2; Side : A; Approx. Time Counter : 10.38}

Questions from Committee Members and Responses:

SEN. GRIMES asked **Mr. Melton** to comment on the issues of due process and reasonable cause. **Mr. Melton** claimed that due process was a term of art and would attach anytime someone's property was taken. The due process in this case is that the obligation to provide the information only occurs after an investigation. On page 4, section 2, line 11, the language states that once the county interdisciplinary child information team meets, they can share information with or without an investigation. Any rumor could be shared with the team without any substantiation. Section 1(3), which has been introduced by the sponsor, provides due process substantially in excess of that provided by the current interdisciplinary child information team.

He further added that the term reasonable cause is not defined under the statute. It is used in licensing statutes. For example, if a board decided to take away a doctor's license, before they move ahead the board needs to have reasonable cause. The term "reasonable cause" is defined in court decisions outside of the state and is identical to the definition of "probable cause" as described by **Mr. Horsfall.**

Mr. McGrath remarked that reasonable cause did not mean anything to him since it is not a term that is used in the criminal justice system. It is not defined under Montana law. Probable cause means that based on specific evidence, there is a belief that a person has committed a specific act. He believed this was mostly defined through case law.

Mr. Horsfall maintained that probable cause is clearly defined in Henry v. United States and Beck v. Ohio,(1964).

SEN. GRIMES questioned how this statute would work with the current interdisciplinary teams. **REP. MOLNAR** remarked that interdisciplinary teams may meet once a month, which may not be often enough.

SEN. GRIMES further questioned how agencies would be included. **REP. MOLNAR** responded that this includes juvenile probation officers, the youth court, or an agency as defined in 41-5-103.

CHAIRMAN GROSFIELD remarked that the bill, in Section 1 (3), did not require a probation officer to notify the school. It required the youth court to notify the school. He believed a conflict existed on line 14. **REP. MOLNAR** explained that line 12 stated "or if a petition has been filed and the juvenile probation office or youth court finds that a youth is currently involved in illegal drug use, illegal drug distribution, or other criminal activity, the youth court shall notify the school

district . . ." The youth court has a very specific obligation to notify the school of current happenings. For example, if the probation officer took a student from Columbus, MT, and placed that student under foster care in Winnett, it would be up to the agency to notify the school regarding the reason the student was moved which could be a drug problem, tail end of probation on a string of car thefts, etc.

CHAIRMAN GROSFIELD questioned what kind of petition would be involved. **REP. MOLNAR** maintained that the juvenile justice system does not mimic the adult justice system. There is an informal consent decree and a formal consent decree. This can be handled without adjudication. The youth admits to the juvenile probation officer that the drugs in his possession were his. This doesn't go to the county attorney. An informal consent decree is signed that this youth will not do this anymore. There is no adjudication but the juvenile probation officer is aware of the circumstances. This includes a petition to the youth court which states that the youth will go to drug treatment, attend school, and be at home by 10:00 p.m. every evening. The formal petition is a little stronger. These are the petitions included in the bill. They are pre adjudicated.

SEN. HOLDEN there are children who attend the same school as him children who are using and selling drugs in school. He added that **Mr. McGrath** stated that this bill is not needed because this information is currently available to the school districts. He asked the school superintendents present whether they are receiving this information. **Mr. McMillan** explained that this would depend upon the county, school district and/or jurisdiction involved. The amount of information varies widely. More information is being made available. The teams he has worked with arbitrarily chose the students they believe are important to discuss. The infrequency of meetings by teams can be a very large problem. Very few schools can afford resource officers that can be the connection between the teams and the school district. Currently, there is a good exchange of information but not nearly the kind of flow of information this bill addresses.

SEN. HOLDEN remarked that the probation officer who testified earlier stated that school districts would be inundated with information if this bill were to pass. **Mr. McMillan** understood that they would only be given information related with drugs and violence related activities. The flow of information regarding a broken window is not what this bill addresses. He trusts that school districts would not have 1900 drug related incidents in a year.

SEN. HOLDEN commented that Dawson County has one high school and the distance to the next high school would be approximately 50

miles. He questioned whether these students would be out on the streets without the opportunity for an education. **Mr. McMillan** responded that in the three school districts where he has served as a school superintendent, he has yet to serve with a board whose first interest was not to try to provide a second or third chance for students in trouble. However, in the instance of severe offenses such as violence, weapons, or drugs, this would involve choices being made by the students and there are consequences involved that go beyond the individual. The other students need to be protected. Two weeks ago, they had an expulsion due to the possession of a weapon. The board regretted to have to take the action, but this needed to be done. He has also seen this board take students who have been expelled from Billings and give them a chance. Parameters and guidelines are clearer explained and the student is told that they will not get a second chance.

CHAIRMAN GROSFIELD maintained that expulsion for a weapon involves an entirely different statute. School boards are required to have a policy of expulsion for weapons. A drug offense would be different. The philosophy of the youth court act is to give the youth a second chance in hopes that he or she may turn around. **Mr. McMillan** agreed. He added that this is why the information is necessary. A school board has the right to expel a student for a drug offense. The first inclination should be serving the troubled student. Sometimes a district does not have the facility or resources to serve a particular student.

SEN. HOLDEN questioned whether the word "reasonable" could be changed to "probable" on page 2, line 11. **REP. MOLNAR** stated that if a youth admits to selling drugs to a juvenile probation officer and goes ahead with an informal consent decree, he doesn't know whether that is reasonable or probable but the juvenile probation officer knows this and it will not be adjudicated. This information needs to be shared.

CHAIRMAN GROSFIELD remarked that the youth court would still sign off on this. The bill would include the opinion of the juvenile probation officer as well as the petition. It would make more sense to address only what is being signed off on by the youth court. **REP. MOLNAR** insisted that there is no similarity between the adult and the youth court systems. The juvenile probation officer can ignore information. **Ms. Mariska** has written a letter which stated that 50% of the cases that went to the county attorney's office, never came out. How can there be adjudication under these circumstances?

CHAIRMAN GROSFIELD asked how interdisciplinary teams were set up. **Mr. Gates** explained that the county attorney set up the teams. He did not know which counties had inter disciplinary teams.

CHAIRMAN GROSFIELD remarked that interdisciplinary teams would be discussing private matters. He questioned how this worked under the open meeting laws. **Mr. Gates** explained that the small team meetings would not be open meetings.

CHAIRMAN GROSFIELD remarked that juvenile probation officers having to produce a finding was a strange concept. He could understand a court coming up with a finding. **Mr. Melton** stated that civil licensing litigation relies on investigations which do have findings. Police reports have a recommendation at the bottom of the report. This does not include a judicial finding. They are asked to draw conclusions based upon the investigation. Without findings, an investigation is useless.

CHAIRMAN GROSFIELD added that on page 2, line 14, the language stated that the youth court shall notify the school. On page 2, line 30, it states that the school district may disclose back to the court. He asked the reason for the dichotomy. **Mr. Melton** responded that this amendment was added in the House. Under current federal law not only are school districts limited in the information they can provide, they are actually prohibited from sharing information regarding student records of youth who have violated the law. The only way this information can be shared is if there is a state statute which allows for this to be done.

{Tape : 2; Side : B; Approx. Time Counter : 11.13}

Closing by Sponsor:

REP. MOLNAR summarized that a county the size of Gallatin County meets formally every other month. They decide whether the school should be given the information. The school should know the students who are coming before they arrive. Expulsion, due process and school administration is already covered by law. There must be due process. The bill addresses those involved in illegal drug use and distribution as well as criminal activity. If there is one troublemaker in a classroom, he starts to draft to other good students. If there are two troublemakers, they reenforce each other. He further remarked that the teachers involved in the Jonesboro massacre stated that if they had only known, they could have watched that youth. They didn't even know he was in treatment.

{Tape : 2; Side : B; Approx. Time Counter : 11.25}

SENATORS GRIMES and **DOHERTY** were excused from the meeting.

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 16, 1999 at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 559, 3/16/1999
Executive Action: HB 27, HB 53, HB 65, HB 149, HB 310

HEARING ON HB 559

Sponsor: **REP. AUBYN CURTISS, HD 81, Fortine**

Proponents: **Bobbie Rossignol, Citizen**
Arla Jean Marie, Montana Stockgrowers and Montana Cattle Women
Wally Sept, Citizen
Lorna Karn, Montana Farm Bureau Federation

Ms. Baker suggested adding a sentence to the effect that the Department's rejection of a witness may not be grounds for stay of the execution. At the Langford execution, the reporter was quite upset that she was excluded. She had gone to the prison to make sure that she knew where she was going, but she had a gun in her car which she always carried with her. Due to a security concern, the Department told her she would not be allowed into the prison and told her not to come back. She called the Attorney General's Office approximately an hour and a half before the scheduled execution. They told her this was a security issue and it was the Department's call.

Ms. Baker added that she could see the potential for someone going to the district court an hour in advance asking for a ruling. She further suggested that a sentence be added stating that this could not be used to stay the execution.

SEN. HALLIGAN withdrew his motion to concur.

Motion/Vote: **SEN. DOHERTY** moved that **HB 53 BE AMENDED BY ADDING THE LANGUAGE THAT THE EXCLUSION OF A PARTICULAR WITNESS IS NOT GROUNDS FOR STAY OF THE EXECUTION.** Motion **carried 8-0** with **SEN. BISHOP** being excused.

Motion/Vote: **SEN. HALLIGAN** moved that **HB 53 BE CONCURRED IN AS AMENDED. Motion carried 8-0.**

EXECUTIVE ACTION ON HB 65

Discussion:

SEN. BARTLETT explained that both **Judge Larson** and the **Department of Corrections** personnel have told her that they have worked out arrangements to meet **Judge Larson's** objectives.

Motion/Vote: **SEN. BARTLETT** moved that **HB 65 BE CONCURRED IN. Motion carried 8-0.**

EXECUTIVE ACTION ON HB 310

Motion: **SEN. HOLDEN** moved that **HB 310 BE AMENDED - HB031001.avl, EXHIBIT(7).**

Discussion:

SEN. HOLDEN remarked that during the hearing it was mentioned that the word "reasonable" was not clear to people who handle these types of cases. They stated that the word "probable" would

work better since it was defined and there was case law addressing the same.

CHAIRMAN GROSFIELD explained that the amendments suggested by **Lance Melton, School Boards Association,** completely changed (3) and did not include the term "reasonable".

SEN. HOLDEN withdrew his motion.

Motion: **SEN. GRIMES** moved that **HB 310 BE AMENDED - EXHIBIT(8).**

Discussion:

Mr. Melton explained that these amendments would provide that the juvenile probation officer be responsible to make the report. The language "reasonable cause" has been changed to reflect that after the investigation, if the juvenile probation officer had reason to believe . . . The only information which would be mandated to be shared would be information that impacts on the safety of children.

SEN. GRIMES remarked that under the old language, his understanding was that schools could receive the investigation report. Apparently this would no longer be the case. Is there a reason for this change? **Mr. Melton** explained that they wanted to know if there is a student in the midst of their other students who poses a threat to the safety of the other children. If this can be accomplished without having the actual report, this is all they need. They are not looking to get into the dirty details of a confidential criminal justice report.

SEN. HALLIGAN contended that peer pressure will never go away. He raised a concern about the innocent child in a crowd who was staying clean. Anyone looking at the crowd would not know that. This child could be swept into this and have criminal activity information being disclosed that really is not present.

Mr. Melton stated that the inter disciplinary child team has free flow of information without any investigation whatsoever. The very purpose of that team is to share information and there is no obligation in existing law to have any investigation. This bill provides a greater right of due process to the student who is targeted because it can only happen after an investigation and it is only with respect to information that bears on the safety of the other children in the school. The Family Education Rights and Privacy Act dictates what school districts can do with respect to their own employees and trustees on the school board. This requires that the only people eligible to receive information that is confidential are individuals who have a legitimate educational interest in that information. If that

information were shared with the superintendent of the district, the superintendent would be violating federal law if he were to tell all the teachers that student "x" might be using drugs.

{Tape : 2; Side : B; Approx. Time Counter : 11.40}

SEN. BARTLETT questioned whether it was typical for school district policies on suspension, admission, or expulsion, to exclude students who may have done some marijuana on a Friday evening but not on school grounds or at a school activity or during school hours.

Mr. Melton explained that there is a wide body of case law dealing with what school districts are allowed to do in regard to non-school hours conduct. There is a case directly on point that states that marijuana use on the weekend does not rise to the level of an offense that is within the gambit of the school district's business. It has to be something that directly impacts on the safe and orderly operation of the school district during the day. The type of off school grounds conduct that is within the jurisdiction of school districts is anything having to do with violence against any other student in the school or against a teacher during non-school hours. It comes down to the situation that if the conduct bears directly upon the safe and orderly operation of the school district, it is within the jurisdiction of the school.

SEN. BARTLETT raised a concern that the amendment did not speak to any of those restrictions. The information that could be transmitted from the probation officer to the school is much broader than the kind of information that the school is likely to act upon.

Mr. Melton responded that school districts have been authorized under a separate section of law to adopt grounds for discipline of students. School districts have that authority under Title 20, Chapter 5. This holds that a school district may adopt policies specifying grounds for disciplinary action including suspension or expulsion. Without the language in the amendment, the law would operate in the same manner.

SEN. GRIMES understood the concerns to protect the innocent but added that there also needs to be a focus on the families that send the children to our schools so that they can have a safe learning environment.

CHAIRMAN GROSFIELD remarked that the language stated "the juvenile probation officer has reason to believe" and "the youth court shall notify". He questioned whether this would involve a discrepancy. **Mr. Melton** explained that the intent was to provide

a separate source of review. There was a concern raised during the hearing about juvenile probation officers labeling someone without an appropriate reason to do so. By placing the notification requirement in the hands of the youth court, the issue would be addressed and also would allow a secondary review mechanism for when those decisions might be made in haste or in error. By placing the notification requirement in the hands of the youth court, he hoped that there may be some discussion and secondary review as a practical matter when those decisions are reached.

CHAIRMAN GROSFIELD suggested the language state "If after an investigation has been completed, a juvenile probation officer and the youth court have reason to believe, then the youth court shall . . ." **Mr. Melton** agreed with the amendment.

Ms. Lane held that the youth court included the juvenile probation officer.

Mr. Melton contended that his intent was to have someone in charge having a review process. If this was set up as the youth court judge, it would create a conflict of interest that would require the judge to recuse himself on each case that the pre adjudication decision is made. He suggested the language remain "the youth court".

SEN. GRIMES questioned whether the language relating to "upon notification" could be removed and not change the intent of the amendment since the school district can apply any policy it wants to apply. **Mr. Melton** agreed that the sentence could be removed, but he would not remove the subsequent sentence which dealt with refusal.

Motion/Vote: **SEN. GRIMES** moved that **HB 310 BE AMENDED BY STRIKING THE SENTENCE "UPON NOTIFICATION, THE SCHOOL DISTRICT MAY APPLY ITS POLICIES REGARDING ADMISSION, SUSPENSION AND EXPULSION TO INFORMATION RECEIVED FROM THE YOUTH COURT." ALSO ON LINE 2, FOLLOWING "A JUVENILE PROBATION OFFICER" HE WOULD ADD THE WORDS "AND THE YOUTH COURT".** Motion **carried 8-0.**

Motion: **SEN. MCNUTT** moved that **HB 310 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. HALLIGAN believed there was exposure of civil liability with respect to the criminal activity issue. The language does not state that a youth gets to know what is in his or her file.

SEN. HOLDEN insisted that there are many good children in the school system. Where is the sense of justice for them? Why do we have to pander to the youth who want to do drugs? The good children suffer because we want to be fair to the druggie and give him every opportunity to excel in the world. Are we protecting the 500 youth in the Glendive school system who are obeying the law that we want to protect or the 10 to 20 who cause all the problems?

SEN. HALLIGAN added that 85% of the youth are in and out of the system after one offense. Current law states "the identity of a youth who for a second or subsequent time admits violating or is adjudicated as having violated a statute". He doesn't want the good youth ending up with bad records because they do not deserve it.

Vote: Motion **carried 5-3 with Bartlett, Doherty, and Halligan voting no.**

EXECUTIVE ACTION ON HB 149

Motion: **SEN. GRIMES** moved that **HB 149 BE AMENDED - HB014902.avl, EXHIBIT(9).**

Ms. Lane explained that the amendments were requested by **REP. DAVIES.** Amendment no. 4 was requested by the University System. The remainder of the amendments limit the bill to persons who hold a concealed weapons permit. In other words, the state could not regulate persons who hold a concealed weapons permit. The bill states that the state cannot regulate use of firearms by certain individuals. The amendment would limit the limitation to persons who carry concealed weapon permits.

SEN. BARTLETT questioned how the amendment would work with the exceptions in (2). **Ms. Lane** explained that it would not affect (2) which means that the state can still regulate the use of firearms by all of the highly trained individuals.

SEN. BARTLETT remarked that if a probation and parole officer had a concealed weapon permit, then the state could not regulate the possession of that firearm even during the working hours. **Ms. Lane** believed this involved a conflict. Subsection (1) held that the state could not limit the use of a firearm by anyone who holds a concealed weapons permit. Subsection (2) states that (1) does not apply to the following persons.

Bud Clinch, Director of the Department of Natural Resources and Conservation, stated that even with the amendment, he is in opposition to the bill. It is his own personal knowledge that